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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/067,208	04/28/1998	WILLIAM G. HOWARD	P-7860	9814

27581 7590 07/24/2002

MEDTRONIC, INC.  
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MINNEAPOLIS, MN 55432-5604

EXAMINER

CREPEAU, JONATHAN

ART UNIT	PAPER NUMBER
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1745

249

DATE MAILED: 07/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

MF=24

**Advisory Action**

Application No.

09/067,208

Applicant(s)

HOWARD, WILLIAM G.

Examiner

Jonathan S. Crepeau

Art Unit

1745

--Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 June 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-8,10-17,28-35,37-44,46-53,55-61 and 92-101.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

Continuation of 3. Applicant's reply has overcome the following rejection(s): Obviousness-type double patenting rejection of claims 1, 3-8, 10, 12-17, and 95-97 (the terminal disclaimer is acceptable and has been entered).

Continuation of 5. does NOT place the application in condition for allowance because: Applicant asserts that "[r]eliance on the '760 patent [Howard et al] is erroneous based on the terminal disclaimer filed concurrently herewith." In response, it is submitted that while the terminal disclaimer obviates the outstanding double patenting rejection, it does not obviate the rejections under 35 USC §103. The '760 patent qualifies as prior art under 35 USC §102(b) against the claims of the application which are not supported by it (i.e., claims 2, 11, 28-35, 37-44, 46-53, 55-61, 92-94, and 98-101), and therefore can be used in a rejection. Applicant also asserts that there is no teaching or suggestion of the anode current collector being shorter in length than the elongated strip of alkali metal in the '165 patent (Schmode), the '271 patent (Crabtree), or the '940 patent (Keister). However, these references are not relied upon to teach this feature. Claims 1, 3-8, 10, 12-17 and 95-97, which are rejected under 35 USC §103 over these references, do not recite this feature. Accordingly, this argument is not germane to claims 1, 3-8, 10, 12-17 and 95-97, and these claims remain rejected over the Schmode, Crabtree, and Keister references.



Patrick Ryan  
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